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**By ECF**

April 7, 2023

Honorable Gabriel W. Gorenstein  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

**MEMORANDUM ENDORSED**

In Re: *New York City Policing During Summer 2020 Demonstrations*,  
No. 20 Civ. 8924 (CM) (GWG)  
This filing is related to all cases

Your Honor:

I am a Senior Counsel in the Office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and I am among counsel for the defense in the above-referenced matter. Pursuant to the Court's ruling during the Court Conference held on March 6, 2023 (Trans. pp 68–69), Defendants further move to preclude the depositions of NYPD Legal Bureau attorneys, Judge Ernest Hart, former Deputy Commissioner of Legal Matters; and Chief of Staff Oleg Chernyavsky, former Assistant Deputy Commissioner of Legal Matters. As the Court may recall, Defendants moved to preclude these depositions by letter to the Court dated February 8, 2023 (Dkt. No. 841). Plaintiffs filed an opposition dated February 15, 2023 (Dkt. No. 855). Defendants filed a reply dated February 22, 2023 (Dkt. No. 872).

On March 6, 2023, the Court ordered the parties to submit supplemental arguments pertaining to Defendants' motion to preclude the depositions of high-ranking NYPD Legal Bureau attorneys, Judge Ernest Hart and ADC Oleg Chernyavsky. (*See* March 6 Tr. at 68:18–69:05). Specifically, the Court ordered Plaintiffs to provide Defendants with "a list of deposition topics that [they] were thinking [they] were going to ask [Hart and Chernyavsky]" within two weeks after the hearing (*i.e.*, by March 20, 2023). (March 6 Tr. at 68:18–21). The Court further deferred decision until after Plaintiffs had taken the deposition of Sergeant Kenneth Rice, an attorney in the Legal Bureau, which was scheduled for March 29th.

As an initial matter, Plaintiffs failed to provide the topics that they intend to question Judge Hart and ADC Chernyavsky on as ordered by the Court. Furthermore, the deposition of Sergeant Rice was commenced on March 29<sup>th</sup> but is held over by Plaintiffs to a later date after approximately 3.5 hours of questioning.<sup>1</sup> Without the benefit of knowing what topics Plaintiffs hope to pursue,

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<sup>1</sup> The second half of that deposition has been rescheduled to May 17, 2023.

it is difficult for Defendants to further supplement their arguments against allowing the depositions of Judge Hart and ADC Chernyavsky.

Defendants will note, however, that in addition to the first half of Sergeant Rice's deposition, Plaintiffs have also taken the opportunity (on March 22nd) to depose former Lieutenant Daniel Gallagher, another Legal Bureau attorney who was Sgt. Rice's supervisor at the time of the protests. To date, Defendants have yet to receive the transcripts for either Lt. Gallagher or Sgt. Rice depositions. The same defense counsel was present for both depositions, and Defendants contend that none of the questions put to Lt. Gallagher or Sgt. Rice indicate a further need to depose their superiors in the Legal Bureau, Judge Ernest Hart and ADC Oleg Chernyavsky.

In light of Plaintiffs' failure to provide the anticipated topics of the requested depositions as ordered by the Court, and given their opportunity to question Lt. Gallagher and Sgt. Rice directly on the Legal Bureau's actions during the protests, Defendants maintain that there is no good cause to allow Plaintiffs an opportunity to depose Judge Hart or ADC Chernyavsky. Accordingly, Defendants' motion for a protective order should be granted to preclude these two depositions.

Thank you for Your Honor's consideration herein.

Respectfully submitted,

*Amy Robinson s/*  
Amy Robinson  
Senior Counsel

cc: ALL COUNSEL (via ECF)

In light of plaintiffs' inadvertent failure to supply the deposition topics, the deadline for plaintiffs to supply the topic areas for the Hart/Chernyavsky depositions is extended to April 14, 2023. The further supplemental letters from the parties shall be due April 24, 2023. Any responses shall be due May 1, 2023. The parties may alter these dates by mutual agreement as long as the new dates are disclosed in a letter filed on ECF.

As to the issue of the Sergeant Rice's deposition: defendants should make every possible effort to reschedule the continued deposition of Sergeant Rice to a date well before May 17, 2023 – and before the April 24, 2023 deadline above if at all possible. Indeed, in the event defendants plan to rely in their supplemental letter on any testimony from Sergeant Rice that was not adduced at the first part of this deposition, the defendants are presumably highly incentivized to reschedule it as soon as possible for this reason alone.

So Ordered.

  
GABRIEL W. CORENSTEIN  
United States Magistrate Judge

April 10, 2023